

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

## VILI TAUELANGI,

Plaintiff,

V.

MICHAEL J. ASTRUE,  
Commissioner of the Social Security  
Administration.

Defendant.

**CASE NO. 11-cv-05862-BHS-JRC**

REPORT AND  
RECOMMENDATION ON THE  
COURT'S ORDER TO SHOW  
CAUSE

NOTING DATE: August 24, 2012

This matter has been referred to United States Magistrate Judge J. Richard  
Creatura pursuant to 28 U.S.C. § 636(b)(1) and Local Magistrate Judge Rule MJR  
4(a)(4), and as authorized by *Mathews, Secretary of H.E.W. v. Weber*, 423 U.S. 261,  
271-72 (1976). This matter is before the Court on this Court's Order to Provide Proof of  
Service or to Show Cause Why this Matter should not be Dismissed (see ECF No. 7).

1 Because there is no evidence in the record that this case has been served properly  
2 and because plaintiff failed to respond to this Court's Order to Show Cause, this matter  
3 should be dismissed without prejudice.

4 DISCUSSION

5 Fed. R. Civ. P. 4(m) requires a defendant to be served within 120 days after a  
6 complaint is filed. Fed. R. Civ. P. 4(l) requires proof of service to be filed or made to the  
7 court<sup>1</sup>. At this time, although the complaint in this matter was filed on October 21, 2011,  
8 the record does not show that the complaint has been served properly (*see* ECF No. 3).

9 *See also* Fed. R. Civ. P. 4(l) (proving service).

10 Fed. R. Civ. P. 4(i) governs service with respect to complaints against the United  
11 States and against United States agencies, officers and employees. *See* Fed. R. Civ. P.  
12 4(i); *see also* *Villegas v. Astrue*, U.S. Dist. LEXIS 55223 at \*1-\*2 (C.D. Cal. April 18,  
13 2012) (*citing* Fed. R. Civ. P. 41(b)).

14 Fed. R. Civ. P. 4(m) requires the court to provide notice to plaintiff before the  
15 matter may be dismissed for lack of prosecution, and Rule 4(i)(4) requires the court to  
16 allow a reasonable time for plaintiff to cure a failure to serve multiple entities, if plaintiff  
17 has effected service on either the United States attorney or the Attorney General of the  
18 United States.

21  
22  
23 <sup>1</sup> This Court's website has instructions regarding ways to accomplish service of  
24 Summons and Complaint: <http://www.wawd.uscourts.gov/referencematerials/forms.htm>;  
<http://www.wawd.uscourts.gov/documents/SpecialCaseNotices/MDL1407/08.pdf>.

1 The Court provided notice to plaintiff that this matter may be dismissed for lack of  
 2 prosecution if plaintiff failed to provide proof of service by June 29, 2012 (*see* Order to  
 3 Show Cause, ECF No. 7). Although “the court must extend the time for service” if good  
 4 cause is shown, plaintiff has not filed anything since the Court’s Order to Show Cause  
 5 (ECF No. 7). *See* Fed. R. Civ. P. 4(m).

6 CONCLUSION

7 According to the Federal Rules of Civil Procedure, if “a defendant is not served  
 8 within 120 days after the complaint is filed, the court-on motion or on its own after notice  
 9 to the plaintiff-must dismiss the action without prejudice against that defendant or order  
 10 that service be made.” Fed. R. Civ. P. 4(m). As plaintiff failed to abide by this Court’s  
 11 order and provide proof of service or show cause why this matter should not be  
 12 dismissed, this matter now must be dismissed without prejudice. *See id.*

14 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have  
 15 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R.  
 16 Civ. P. 6. Failure to file objections will result in a waiver of those objections for  
 17 purposes of de novo review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C).  
 18 Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the  
 19 matter for consideration on August 24, 2012, as noted in the caption.

20 Dated this 27th day of July, 2012.

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 23

24 J. Richard Creatura  
 United States Magistrate Judge